IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5242 OF 1991

Shri K.M.Upadhye,)
Residing at Room No.16, 39-D,)
Gokhale Wadi, Bhawani Shankar Road,)
Dadar, Bombay 400 028.).. Petitioner
(Org.Defendant)

Vs.

1. Bhaskar Laxman Rane,)

2. Mohan Gopal Rane,)
both residing at C/o.Gopal)
Laxman Rane, Flat No.B-10,)
Suman Sudha, Pestom Sagar,)
Chembur, Bombay - 400 071.).. Respondents
(Org.Plaintiffs)

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None present for the petitioner.

None present for the respondents.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 14TH NOVEMBER, 2005.

ORAL JUDGMENT :

1. None present. Perused the records.

2. The records disclose that it was informed by the advocate appearing for the respondent No.2 on 29th

August, 2002 that the respondent No.1 has already expired. No steps have been taken to bring the legal heirs and representatives of the respondent No.1 on record. The petition accordingly against the respondent No.1 stands abated.

3. The grievance of the petitioner in the petition relates to the order passed by the trial Court allowing the application for amendment to the plaint. The order was passed on 28th October, 1991. The amendment which was allowed relates to the facts apparently which have occurred subsequent to the filing of the suit as also to certain facts which had occurred prior to the filing of the suit, but necessity of incorporating those facts arose consequent to the acts on the part of the defendant committed after filing of the suit. The facts which have sought to be incorporated in the pleadings by way of amendment relate to the matter in issue and pertain to the claim of entitlement to certain rights arising out of those facts. Obviously, therefore, incorporation of those facts in the pleadings was absolutely necessary for the purpose of final and effectual adjudication of controversy between the parties. Considering the same, no fault can be found with the impugned order allowing the amendment to the

plaint. Undisputedly, the amendment was much prior to the commencement of recording of the evidence in the matter. Hence, the impugned order does not warrant interference in writ jurisdiction. In any case, the parties would be entitled to challenge impugned order on final disposal of the suit at the time of filing of appeal, if they so desire. Reserving the said right in favour of the aggrieved party, it would not be proper for this Court to interfere with the impugned order in writ jurisdiction and hence the petition is dismissed. Rule discharged with no order as to costs. Interim relief stands vacated.

(R.M.S.KHANDEPARKAR, J)